



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 8, 2003

Ms. Elaine Sample  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2003-3120

Dear Ms. Sample:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180702.

The El Paso Police Department (the "department") received a request for information relating to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the present request for information was made on behalf of another governmental body. Although another governmental body's request for information may be treated as a request under chapter 552 of the Government Code, the governmental body that receives such a request is not required to do so. This office has long recognized that as a matter of public policy, governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997); *but see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision Nos. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that

information may be transferred between governmental bodies on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Such a disclosure of information to another governmental body is not a public release of confidential information, for purposes of section 552.352 of the Government Code, or a selective public disclosure of information for purposes of section 552.007. Thus, the department has the discretion to make the requested information available to this particular requestor, provided that no law outside chapter 552 of the Government Code prohibits the department from doing so. However, should the department decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of your claimed exception to the requested information.

You claim that the requested information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state, and have provided documentation demonstrating, that the requested police report relates to an incident that is the subject of a pending criminal investigation and prosecution. You assert that the release of information relating to that incident would interfere with the investigation and prosecution of the pending case. Based on your representations and our review of the information at issue, we find that section 552.108(a)(1) is applicable to the requested information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

We also note that this requestor appears to have a special right of access to criminal history record information (“CHRI”). Section 411.097 of the Government Code specifically grants a school district a right of access to obtain CHRI from the Texas Department of Public Safety (“DPS”). Section 411.097 provides in part:

(b) A school district . . . is entitled to obtain from the [DPS], no more than twice each year, [CHRI] maintained by the [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is a volunteer or employee of the district[.]

Gov't Code § 411.097(b); *see also* Educ. Code § 22.083(c)(1) (providing that school district may obtain from any law enforcement or criminal justice agency all CHRI that relates to volunteer or employee of district). As an agency authorized to obtain CHRI from DPS, the school district also is authorized to obtain CHRI from the Federal Bureau of Investigation or another criminal justice agency in this state, such as the department. *See* Gov't Code § 411.087; *see generally* Open Records Decision Nos. 655 (1997), 565 (1990). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See* Gov't Code § 411.082(2).

In this instance, the requestor identifies himself as an assistant superintendent of the Socorro Independent School District in El Paso. The requestor seeks access to information relating to another employee of the school district "for administrative purposes." We therefore conclude that, when read together, sections 411.087 and 411.097 of the Government Code give the school district a statutory right of access to CHRI. *See* Gov't Code § 411.082(2). Therefore, the department also must release information from the submitted documents that reveals the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Gov't Code ch. 552). The department may withhold the rest of the requested information under section 552.108(a)(1). As we are able to make these determinations, we need not address section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

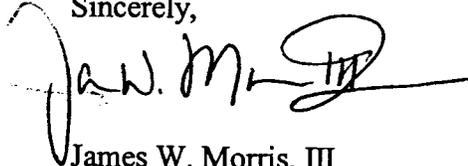
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 180702

Enc: Submitted documents

c: Mr. Antonio Baca  
Assistant Superintendent for Administrative Services  
Socorro Independent School District  
P.O. Box 292800  
El Paso, Texas 79929-2800  
(w/o enclosures)